BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF LONE STAR INDUSTRIES, INC., Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AUTHORITY, Respondent.	PCHB No. 80-149 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the issuance of a $250 civil penalty (No. 4756) for the alleged violation of section 9.15(a) of Regulation I, came before the Pollution Control Hearings Board, Nat Washington, chairman, and David Akana (presiding) at a formal hearing in Seattle on October 2, 1980.

Respondent was represented by its attorney, Keith D. McGoffin; appellant was represented by Kenneth J. Rone, Jr., its assistant plant manager.

Having heard the testimony, having examined the exhibits, and

having considered the contentions of the parties the Board enters these

FINDINGS OF FACT

I

Appellant owns and operates a cement plant located at 3801 East Marginal Way South in Seattle, Washington. A part of the plant involved in the instant matter is the finish mill tower number 12.

II

On June 11, 1980, at about 8:50 a.m., respondent's inspector saw dust emissions from tower number 12 which reached 100 percent opacity. The inspector continued to another appointment but returned at 9:55 a.m. and again observed dust emissions rising about 100 feet from the tower reaching up to 60 percent opacity. The tower operation stopped shortly thereafter. The inspector advised appellant's employee that a violation occurred and issued a notice of violation of section 9.15(a) of Regulation I. Appellant then explained its program to control its fugitive dust to the inspector.

For the forgoing event, appellant was issued a $250 civil penalty from which followed this appeal.

III

Since mid-1978, appellant has followed a program to curtail fugitive dust emissions from various parts of its facility, including tower number 12. In 1979, about $40,000 was spent to control dust at the tower but by November, 1979, appellant concluded that the design was not adequate and the system was abandoned. A temporary pneumatic conveyor was placed into operation but it too was not an adequate

solution to control particulate emissions. Appellant is in the process of redesigning the system and has instructed its key personnel on close monitoring procedures to avoid violations from the existing system.

IV

Appellant has been issued a number of civil penalties for violations of Regulation I. Four violations have been noted by respondent after January, 1979, two of which involve tower number 12.

V

Pursuant to RCW 43.21B.260, respondent has filed a certified copy of its Regulations I and II which are noticed.

Section 9.15(a) makes it unlawful for any person to cause or permit particulate matter to be handled, transported, or stored without taking reasonable precautions to prevent the particulate matter from becoming airborne.

Section 3.29 provides for a civil penalty of up to $250 per day for each violation of Regulation I.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Section 9.15(a) is violated if the facts show appellant handled, transported or stored particulate matter "without taking reasonable precautions" to prevent the particulate matter from becoming airborne.

II

Respondent proves a prima facie violation by showing that airborne dust from the tower could be seen. From that, an inference can be made that "reasonable precautions" were not taken. The burden of going forward with the evidence at that point is upon appellant to show that it had taken "reasonable precautions" to prevent dust from becoming airborne. The evidence produced by respondent showed that dust was being emitted at 8:50 a.m. until the inspector left, and again at 9:55 a.m. when he returned. From these facts, and having no evidence to the contrary produced by appellant, whose employees closely monitor the system, an inference can be made that airborne dust was emitted during the time interval between the two observations. Emissions for that period of time do not demonstrate "reasonable precautions" under the circumstances of this case.

III

Appellant violated section 9.15(a) of Regulation I and the civil penalty, which is reasonable in amount, should be affirmed.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The $250 civil penalty is affirmed.

DONE this 28th day of October, 1980.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington

NAT W. WASHINGTON, Chairman

David Akana

DAVID AKANA, Member